The charge was under section 4(c) of Ordinance No. 45 (Common Gaming Houses) of having assisted in carrying on a public lottery. After the plea and conviction was recorded the Prosecuting Officer made a statement to the Court giving details of the lottery and the responsibility of the four accused in carrying it on and also put in letters signed by three of the accused relating to the sale of tickets. These letters were admitted by the accused and none of the statement was controverted by any of the accused. I am satisfied as to the correctness of the conviction, which is confirmed, but I thought that it was desirable to record formally in a written judgment an answer to the question raised.

Section 178 of the Criminal Procedure Code deals with the procedure in summary trials and paragraph (b) of such section relates specifically to recording a plea of guilty. The Magistrate must be satisfied before recording such a plea that the accused not only understands the nature of the charge and the consequences of his plea but that he also admits without qualification the offences so charged. In such case the Magistrate is fully justified in recording a conviction, but it is entirely in the discretion of the Magistrate to do so. If he decides not to accept such plea and not to convict thereon he should record his rea-
[244] [244] sons, and the trial should then proceed in the ordinary way.

It might also be noted that a plea of guilty may be withdrawn before the sentence has been passed but this, again, is only with the leave of the Magistrate, who has a discretion in the matter (*Rex* v. *Plumer*, [1902] 2 K.B. 339).

Having recorded a conviction on such a plea a Court usually requires information as to the accused's antecedents, and probably also as to the details of the offence charged. This information need not necessarily be by formal evidence. *Henry Weaver*, 1 Cr. A.R. 12. It may be only as to suspicious events. *Kate Edwards*, 3 Cr. A.R. 59.

If it is suggested that some part of the information tendered is not correct and is challenged by the accused, then the Magistrate should inquire into that part, and if necessary postpone sentence for the purpose of receiving formal proof of the disputed statement. Alternatively, the Magistrate should ignore such disputed statement, but taking care to record the fact that he does so ignore it. If the accused does not challenge the information given, then the Magistrate may take it into consideration. (*Donald Campbell*, 6 Cr. A.R. 131).

The only local case to which I have been referred is *Palan* v. *Public Prosecutor, Johore Bahru*, [1932] M.L.J. 124. In this case Murison C.J. is reported as having stated "as an Appeal Court, I think we ought to have some evidence taken by the trial Judge to indicate the nature and quality of the criminal act for which the sentence is given. Without that evidence we cannot be in a position to say whether the sentence is fair or not. It is not, in my opinion, enough for the Public Prosecutor to read to us the depositions of the Magistrate." Terrell J. agreed with the Chief Justice. In this case the accused had received a sentence of six years' for voluntarily causing grievous hurt and had pleaded guilty. There was nothing before the Appeal Court to show either the nature of the act or the previous antecedents of the accused.

Admittedly, it is a matter in the discretion of the Court, but the cases shew that it is usual, where a plea of guilty is accepted, to record some information (which may or may not amount to formal evidence) to shew that the punishment inflicted is deserved. Otherwise, there is nothing to guide a Court of Appeal in this respect, when an appeal is lodged. I am not suggesting that this course should be adopted in every case which comes before a Magistrate or District Judge, particularly in respect of petty or minor offences. But where, in what appears to be such a case, an exceptionally heavy fine is imposed or imprisonment for some considerable period is ordered without the option of a fine, then the Magistrate or District Judge should record his reasons for passing the sentence and the information placed before him, so as to shew some justification for having awarded such punishment. In the absence of such reasons and information on the record, the sentence is liable to be varied by a Court of Appeal.

HASSAN v. FOGDEN, BRISBANE & CO. LTD.

[Workmen's Compensation (Williams, Commissioner) September 15, 1936]

[Singapore Workmen's Compensation Claim 51 of 1936]

Workmen's Compensation Ordinance, (Cap. 70), s.6.

Held: that the words "fourteen days" in the explanation to section 6 of the Ordinance mean a continuous period of fourteen days.

Held further: that the words "total wages earned" in section 6(1)(c) of the Ordinance mean the amount actually payable for work performed and that these words must be interpreted without reference to section 8(4) of the Labour Ordinance (Chapter 69).

Handy (Extra Assistant Controller of Labour) for the applicant.

Vaux for the respondents.

E. B. Williams, Commissioner: In this case the applicant is a workman named Hassan who sustained a serious accident while in the employment of one Pereira. The respondents are Messrs. Fogden, Brisbane & Co., Ltd. who are admittedly the principals within the meaning of section 15 of the Workmen's Compensation Ordinance. The emplover Pereira is not a party to the proceedings though he was present at the hearing. All the facts in the case were admitted and the only point in issue between the parties was what was the monthly wage of the applicant within the meaning of section 6 of the Ordinance. It was admitted that the daily pay of the applicant was 70 cts. During the period of his employment lasting from the 3rd September to the 23rd October a period of 51 days the applicant is recorded in exhibit B, a document which is admitted to be correct by both parties, to have worked and been paid for 18 full days, 12 half days and 2 three-quarter days. On 19th days he did no work. The longest continuous period during which he did no work was 5 days.

The respondents submitted that for the purpose of calculating the monthly wage the case came under section 6(1)(c) of the Ordinance. The amount shown to have been paid as wages, vide exhibit B. was $16.10, and it was submitted by the respondents' counsel that the proper monthly wage under section 6(1)(c) was $16.10, multiplied by 30 divided by 51 (the number of days of the period 3rd September to 23rd October).

[245] [245] The first point taken by myself as Commissioner, was whether in view of the explanation to section 6 the period of 51 days was "continuous." The explanation reads as follows:—

> "A period of service shall for the purpose of this section be deemed to be continuous which had not been interrupted by a period of absence from work exceeding 14 days."

It appears from exhibit B. that though the total absence from work in the period was 19 days there was no continuous absence from work in excess of 5 days. In *C.M. Agarwala's* edition of the Indian Workmen's Compensation Act, 1923 (1924) the learned author states "the explanation itself is not very happily worded as it does not tend to make it clear whether a period of absence from work required to break the continuity of a period of service must itself be a continuous period of 14 days or not." Section 6(1)(c) of our Ordinance and the explanation are both copied from the Indian Act. Mr. Agarwala does not answer the query put by himself above but he suggests that the period of 14 days must be continuous in order to break the continuity of the period of service. I agree with this suggestion because otherwise I think that paragraph (c) of section 6(1) would in a vast majority of cases be nugatory. There would be few cases in which over a period of months the workman had not absented himself from work for a total of 14 days by way of leave taken for periods of 1, 2 or 3 days at a time.

For the above reasons I think that in this case the last continuous period of service immediately preceding the accident was the period 3rd September to 23rd October, i.e. 51 days. The only other point raised was an ingenuous argument put up by Mr. Handy, the Extra Assistant Controller of Labour based on section 8(4) of the Labour Ordinance. Under that section the employer is bound to provide 24 days work in any one month for a labourer; to quote the words in the sub-section: "If the employer shall fail to provide work for the labourer he shall pay to the labourer in respect of every day on which he shall so fail wages at the same rate as if the labourer had performed a day's work; provided that such wages when added to wages payable for work performed, shall not exceed in the aggregate the amount of 24 days' wages." Mr. Handy in effect asked me to hold that the total wages earned by the applicant (within the meaning of section 6(1)(c) of the Workmen's Compensation Ordinance) were the wages which he might have been paid had he insisted on his rights under section 8(4) of the Labour Ordinance or in other words that the total wages earned were 24 days' pay in respect of each month.

I regret that I am unable to accept this interpretation of the meaning of the expression "total wages earned." The ordinary meaning is quite clear. Wages earned appear to me to mean wages due in respect of work done and I decline to call in aid the provisions of section 8 of the Labour Ordinance in order to hold that "wages earned" has an entirely different meaning to its ordinary meaning. I do not deny that circumstances might arise in which one might have to turn to section 8(4) of the Labour Ordinance in order to ascertain the meaning of average wage in section 6(1)(b) but in view of the fact that section 6(1)(c) is easily intelligible without referring to any other Ordinance I prefer to attach to section 6(1)(c) of the Workmen's Compensation Ordinance its ordinary plain meaning. I therefore hold that the monthly wage of the workman is as submitted by counsel for the respondents, i.e.

$$\frac{30 \times \$16.10}{50} = \$9.47, \text{ say } \$9.50.$$

It is admitted that this is a case of partial permanent disability amounting to 50 per cent and the amount payable therefore will be:

$$\$9.50 \times \frac{42}{2} = \$199.50$$

The sum of $199.50 has been paid into my office by the respondents and will be paid out to the applicant on his application. There will be no order as to costs.

Order accordingly.

Solicitors: *Rodyk & Davidson.*

Re SYED HASHIM BIN KASSIM, DECD., late SULTAN OF SIAK

TUNGKU KECHIL MUDA SYED SAGOFF & ORS. v. SHERIFF KASSIM BIN HASHIM, SULTAN OF SIAK & ORS.

[O.C.J. (Adrian Clark J.) September 24, 1936]
[Singapore Suit No. 930 of 1922]

Estate Duty Ordinance, ss.23(1) and 26 — Burden of Estate Duty — By whom it should be borne.

A testator bequeathed property to his trustees with directions to distribute the income during a period represented by 12 named lives and 20 years after the death of the last survivor of them among many beneficiaries in certain shares of certain percentages of the whole. Upon the death of any beneficiary provision was made in the will for the redistribution of his share of income among certain others of the beneficiaries. Upon the arrival of the date of distribution provision was made for the conversion into money of all the estate of the testator and for its final distribution.

Two of the beneficiaries died and their shares in the income became redistributable among certain other beneficiaries; in consequence of which deaths estate duty was claimed by the Collector of Estate Duties and was in fact paid. The question thereupon arose whether this money paid for estate duty should be borne by the corpus of the testator's residuary estate or whether it [246] should be borne by the annuitants benefiting by the cessor of the respective life interests. [246]

Held: that the estate duty should be deducted from that portion of the capital of the whole estate which was deemed to have passed upon the cessor of the respective life interests and that any part thereof was payable out of income.

Held also: that any annuitant benefiting by the cessor of a life interest is not liable to pay any part of such estate duty but is liable to refund to the trustees the difference between the total amount of any income paid to him, between the date of death of any deceased annuitant and the date